

1 1 1/4 pounds of green loose.

2 Q And green loose is referring to marijuana.

3 A It's the -- it's the lesser grade of marijuana, that  
4 would be the debris in a sense or less preferred. Put it that  
5 way.

6 Q Are you saying then -- when you're saying it's the  
7 same transaction, are you talking about the same as Number  
8 Four? Number Four and Number Six are essentially the same?

9 A Well, that's what I think it is, yes.

10 Q Well, the one is talking about green loose and the  
11 other is talking about brown.

12 A One is talking about an amount here and the second  
13 one is relating to the type that it was and that's what I  
14 think all this is in relationship to.

15 Q You think that this document then refers to your  
16 purchases of marijuana from your cousin, Terry Clemmons. Is  
17 that correct?

18 A Well, I think that this 1/4, pound sign, brown,  
19 \$200, paid by check to Terry was. The total amount of  
20 marijuana that I ever purchased from Terry Clemmons, I don't  
21 know. I did purchase more than 1/4 pound. But the exact  
22 amount over the 20-some years, I do not know.

23 MR. ZAUNER: Your Honor, at this time, I'd like to  
24 have a document identified --

25 JUDGE SIPPEL: We're at our noontime -- it's now our

1 noontime break. Do you want to do one more document and then  
2 we'll come back a little bit later?

3 MR. ZAUNER: Yes, Your Honor. This is almost --

4 JUDGE SIPPEL: To complete the area?

5 MR. ZAUNER: -- a companion piece to this one.

6 JUDGE SIPPEL: All right. Any objection to that?

7 MR. McCARTIN: No, Your Honor.

8 JUDGE SIPPEL: We'll still have an hour and fifteen  
9 minutes for lunch.

10 MR. McCARTIN: Could I ask the Court for two minutes  
11 to just take a --

12 JUDGE SIPPEL: Yes. Let's go off the record then.

13 (Off the record.)

14 (On the record.)

15 JUDGE SIPPEL: We're back on the record.

16 BY MR. ZAUNER:

17 Q With regard, again, to Mass Media Bureau Exhibit  
18 Four, why would you be purchasing marijuana from Terry if, in  
19 fact, you were growing it on your ranch?

20 A Well, I only grew it in the amounts of this 34 to 37  
21 plants one time. Prior to that, the only time throughout the  
22 twenty years were isolated incidences of a plant here in this  
23 year, two plants in this year, a plant here, a plant there  
24 over the years. The majority of time, I purchased marijuana.

25 Q Well, isn't it a fact that just prior to the police

1 coming to your home and arresting you, that you had had over a  
2 hundred plants down in your orchard?

3 A There were growing a hundred plants free volition  
4 that were removed by me, pulled out, prior to July 25, 1991.

5 Q When you say pulled out, you're seeking to  
6 distinguish between pulling them out and taking them out for  
7 replanting?

8 A Well, yes. Yes, they were removed, roots and all,  
9 cut off with a shovel, roots and all, put into my van, taken  
10 47 miles away, and dumped into the San Pedro River on the  
11 fourth of July.

12 Q Of what year?

13 A Of 1991.

14 Q Why did you destroy these particular plants?

15 A Because I was leaving to go to Chicago since my  
16 father was in the Veteran's Hospital and not expected to live  
17 and I didn't know the period of time that I would be gone and  
18 I tried to go around the property and that was one area where  
19 I had seen some plants growing. They had been in an area  
20 adjacent to the area that I farmed and they were being  
21 watered, unbeknownst to me, until I saw them when they were  
22 about six inches to eight inches high, that when I was going  
23 to leave, I didn't want to leave those growing there for fear  
24 of jeopardizing the property.

25 Q You said you saw them being watered?

1           A     No, I saw them as they were growing and they were  
2 growing as a result of the overspray of water. It was an area  
3 approximately as big as this centerfold area here that you  
4 could walk in and there was like a hundred -- there could've  
5 been more, there could've been less. But just a whole patch  
6 close together, six inches, eight inches, you know, in that  
7 area, just enough that you could notice them. So I pulled  
8 those out and dumped them into the San Pedro River  
9 approximately 47 miles from my property.

10          Q     But you did not pull the ones that were growing on  
11 National Park Service land.

12          A     No. I was cultivating those for my personal smoke.

13          Q     Looking again at Mass Media Bureau Exhibit Four,  
14 that indicates -- at least in one instance, it appears to  
15 indicate at least one \$7,000 purchase of marijuana. How much  
16 marijuana would be purchased for \$7,000?

17          A     Oh, approximately \$700 a pound.

18          Q     So you're talking about approximately ten pounds of  
19 marijuana?

20          A     That would be close, yes.

21          Q     That is quite a bit of marijuana, is it not?

22          A     Well, I smoked about four pounds a year myself.

23          Q     Why would you purchase such a large quantity of  
24 marijuana?

25          A     Well, in my opinion, if I may, I don't think this

1 reflects that this was a single one-time purchase. I think  
2 what we have here is a period of time that could be more  
3 extensive than a year, but that reflects a total amount of  
4 purchase from Terry that -- and it itemizes the different  
5 items and refers to them many time in here. They all relate  
6 over to the right-hand column.

7           So what I present here is the way I understand this  
8 document is that ten pounds of marijuana for a total of  
9 \$7,000. Of that ten pounds, two pounds were brown, a quarter  
10 pound was another type of brown, 1 1/4 pounds were green  
11 loose, and the note here, "that was in the trunk after I  
12 left," and it was with or part of the \$6,300 that was already  
13 paid. That's the way I understand it.

14           Then the ten ounces of brown signified another type  
15 of brown. The 265 grams of green loose bud and the 310 grams  
16 which is approximately a little over a pound and a half both  
17 signified green loose bud and so that's the way I read it  
18 anyway. I mean, assuming this is mine, assuming I wrote this  
19 at some time in the period of when I first entered the ranch  
20 or thereabouts or thereafter, that's what it shows to me, that  
21 this is a purchase and it's notes for my own mental  
22 remembrance of what was due, what I paid, and what the type  
23 was.

24           Q     We spoke earlier about your having a triple beam  
25 scale. What was the purpose of the triple beam scale at your

1 | home?

2 |       A     Well, the purpose of the triple beam scale is to  
3 | establish accurate weights for sale of commodities that you  
4 | would grow as a farmer that would be the items that you would  
5 | put the item in. As an example, if you're packaging garlic  
6 | and you're selling an ounce of garlic or two ounces of garlic  
7 | -- usually it's two ounces at least -- you would weigh the  
8 | container that you put it in first to deduct and know what  
9 | that weight of that -- the tar weight you might call it, I  
10 | think. It's the weight of the bag, not the weight of the  
11 | product.

12 |               So if you were using a zip lock bag that weighed 13  
13 | grams, you would want to know that so that when you then used  
14 | the other scales -- see, I had, like I say, 18 scales. Now,  
15 | not all of these scales were all of the same type. There were  
16 | many different varieties. I'm a scale buff, as they would  
17 | call it. I just collect scales. In fact, I think there's  
18 | many pictures of the scales in somebody's paper work here.  
19 | They're all different types, postal scales for home use and  
20 | some were U.S. Postal scales from the U.S. Post Office.

21 |       Q     Were you in the business of packaging small packages  
22 | of garlic?

23 |       A     That's right. I packaged all types of things, but  
24 | garlic was an item that you would package. We packed other  
25 | types of herbs, chaparral, many items. Anything that you may

1 come across, whether it was now also packaging for your own  
2 personal use to store it away so that the bugs didn't get into  
3 it or whether you were packaging it up for sale.

4 MR. ZAUNER: Your Honor, at this time, I would like  
5 to have marked for identification as Mass Media Bureau Exhibit  
6 Five a one-page document.

7 JUDGE SIPPEL: All right. This is a one-page  
8 document and it contains more handwriting notations on it.

9 MR. ZAUNER: Yes.

10 JUDGE SIPPEL: And it is now marked for  
11 identification by the reporter as Mass Media Bureau Exhibit  
12 Number 5 for identification.

13 (Whereupon, the document referred  
14 to as Bureau Exhibit Number 5  
15 was marked for identification.)

16 BY MR. ZAUNER:

17 Q Mr. Richards, have you ever seen this document  
18 before?

19 A Yes, I have.

20 Q When was the first time you recall having seen it?

21 A At the same time I saw Number Four.

22 Q And that was at your attorney's office?

23 A Correct.

24 Q Can you tell us whether this document is in your  
25 handwriting or not?

1           A     Let's assume it is.

2           Q     Can you tell us what this document represents?

3           A     Well, I had considerable time, so I may have the  
4 edge on you as to what this really signifies. But this is a  
5 duplicate. You can relate these items on this second document  
6 to the first document. You notice the figure of \$6,300 is  
7 still the same right there at the top. You notice the two  
8 ounces and the eight ounces is also the same as Item Number  
9 Seven on the first document, two ounces. You don't see -- you  
10 see eight and two right by Item Number Seven. Eight and two  
11 is ten and that's ten ounces of brown and then you see -- you  
12 see that figure?

13          Q     Uh-huh.

14          A     And then you see the 265 loose. Well, that's the  
15 same figure as Item Number -- well, I see it crossed out, but  
16 it's Number Eight underneath the markings. That says 265  
17 loose and if you notice, that says 265 loose. That signifies  
18 grams. Then it's 310 and then you'll notice under there, it  
19 says 310. So what this is, is kind of a secondary scratch  
20 sheet relating to the first scratch sheet.

21               MR. ZAUNER: Your Honor, I'd offer into evidence  
22 Mass Media Bureau Exhibit Five.

23               JUDGE SIPPEL: Same objection?

24               MR. MCCARTIN: Yes, Your Honor.

25               JUDGE SIPPEL: Same objection? Overruled. It's in



1 as Exhibit Number 5.

2 (Whereupon, the document referred  
3 to as Bureau Exhibit Number 5  
4 was received into evidence.)

5 MR. ZAUNER: Your Honor, this would probably be a  
6 good place to break for lunch.

7 JUDGE SIPPEL: All right. I just want to warn the  
8 witness you're still under oath, you're still on the witness  
9 stand even though you're eating lunch. There will really no  
10 other witnesses that's going to be testifying except this one.  
11 Is that correct? I mean, for purposes of sequestration.

12 MR. ZAUNER: We may have a rebuttal witness, but  
13 that would not effect the sequestration order.

14 JUDGE SIPPEL: Just like I said, that you're -- just  
15 remember that you're still under oath even though you're off  
16 the stand for lunchtime and we'll come back here at 25 minutes  
17 of one by that clock in the back of the room.

18 (Off the record at 12:22 p.m. to recess for lunch  
19 and to reconvene at 1:50 p.m.)

20

21

22

23

24

25

1 A F T E R N O O N S E S S I O N

2 JUDGE SIPPEL: We're back on the record. Mr.  
3 Zauner, do you have a preliminary information or preliminary  
4 report to give before we proceed?

5 MR. ZAUNER: Yes, Your Honor. I made an attempt to  
6 forestall the necessity of calling a rebuttal witness. We  
7 were -- I offered to introduce some information in written  
8 form which I understood would be the same information he would  
9 offer if he were called upon to testify. I've been informed  
10 by Mr. McCartin that they would want the opportunity to cross  
11 examine my rebuttal witness. Because of the nature of the  
12 information that the rebuttal witness would be offering, Mr.  
13 McCartin has also indicated that he would need time to prepare  
14 for his examination of my witness. I have expressed no  
15 objection to that, given the nature of the testimony that  
16 would be offered and we have agreed that we will, in effect,  
17 reach an agreement as to when and where this further rebuttal  
18 testimony will be offered and any sur-rebuttal would be  
19 offered by Mr. McCartin.

20 JUDGE SIPPEL: Well, let me start with the where  
21 part of that first.

22 MR. ZAUNER: Well, not where. We know where, I  
23 guess, actually, but when.

24 JUDGE SIPPEL: When. And it would not be tomorrow.

25 MR. ZAUNER: It would not be tomorrow.

1 JUDGE SIPPEL: All right. Well, I'll let you  
2 continue to talk about it as long as it doesn't reasonably --  
3 or unreasonably keep the record open. I'll go along with what  
4 you agreed to.

5 MR. ZAUNER: Thank you, Your Honor.

6 JUDGE SIPPEL: One other point before we proceed. I  
7 was able to look at two of these authorities that were cited  
8 to me this morning, the first being Humphries, et al. at 12  
9 FCC 2nd 978 and I find the situation in that case to be  
10 different from here. In that case, that was back in 1968, it  
11 was required that an issue be added to bring in evidence of  
12 meritorious broadcasting as mitigation to a finding of a  
13 violation in a renewal context and that's not what the  
14 evidence is being introduced in this case for. It is not  
15 being introduced as meritorious broadcasting in order to  
16 mitigate a violation. It certainly isn't being received that  
17 way and I take it, it is being offered for basically the  
18 purposes that I have explained, that it establishes that there  
19 is an ongoing business concern down there in Sierra Vista and  
20 this is the -- Mr. Richards' way of explaining what's going on  
21 down there. It may be more than is needed, but it's not much  
22 more than is needed and in my discretion, I'm letting him put  
23 his case on the way he sees fit -- over your objection. I  
24 understand. But I'm trying to distinguish the ruling from the  
25 cases that you've cited. Now, I haven't gotten to the other

1 one yet. Maybe could you refresh me on the citation? I had  
2 it at 56 FCC 2nd.

3 MR. ZAUNER: It looks to me -- and perhaps I misread  
4 it. It seems to be 55 FCC 2nd 808. I have a photocopy of it  
5 here if nobody would have any objection to my handing it to  
6 you. I have one sentence underlined on it.

7 JUDGE SIPPEL: Yes. Show it to Mr. Schattenfield  
8 first.

9 MR. ZAUNER: It's my only copy.

10 JUDGE SIPPEL: He wants to be sure that you haven't  
11 written anything about him on it.

12 MR. SCHATTENFIELD: I'd just like to see what it  
13 says.

14 JUDGE SIPPEL: I know. That's absolutely right.  
15 Now, while you're looking at that, I have looked at the RKO  
16 citation that Mr. McCartin cited and I do find that to be in  
17 the ballpark for a holding that -- the way I'm handling the  
18 situation here is appropriate. I won't say anything more than  
19 that because I'm sure this will be briefed later on.

20 But basically it does give me authority to take in  
21 this kind of evidence, the evidence that you're objecting to  
22 for purposes of mitigation. That's basically all that I had  
23 and as I said, I'll continue to look at these cases whenever I  
24 can get to them. Are you ready to proceed then with your --  
25 continue with your cross examination?

1 MR. ZAUNER: Yes, Your Honor. I am.

2 JUDGE SIPPEL: All right. You may proceed. You're  
3 still under oath, Mr. Richards. You understand that.

4 BY MR. ZAUNER:

5 Q As a preliminary matter, you've already identified  
6 Linda Sorenson as a girlfriend who lived at the ranch with  
7 you. Is that correct?

8 A That's correct.

9 Q And during what period of time did Linda Sorenson  
10 reside at the ranch?

11 A Well, about as clear as I remember, not knowing the  
12 exact dates, she lived there for a short time, left, went out  
13 of state, returned, lived there for a short time, left, and  
14 then came back for a short time.

15 Q When did she -- when did she first begin living  
16 there and then when did she leave for the last time?

17 A I think she first came there in the latter part of  
18 '89, if I'm not mistaken, left -- I'm speaking of the latter  
19 part like November, December, somewhere in there, I think,  
20 and then left in April --

21 Q When was the last time -- when was the last time  
22 that she resided at the ranch?

23 A July 25, 1991.

24 Q Did you and she have an altercation on July 25,  
25 1991?

1           A     Yes.

2           Q     Did you, in fact, strike Linda Sorenson on that  
3 date?

4           A     No.

5           Q     Did you loosen her teeth?

6           A     She loosened her teeth upon trying to bite my thumb  
7 off.

8           Q     As a result of the altercation with Linda Sorenson,  
9 were you charged with any crime?

10          A     Domestic violence.

11          Q     And was that charge later dropped?

12          A     It was never completely filed.

13          Q     Did Linda Sorenson ever accompany you on a trip to  
14 California?

15          A     Yes.

16          Q     And when was that?

17          A     Well, it was in the Christmas holiday season, but I  
18 don't know what year.

19          Q     Was there anybody else --

20          A     Prior to July 25, 1991.

21          Q     Prior to July -- yes, that's correct. Thank you.

22                JUDGE SIPPEL: Be careful about speaking over one  
23 another because the microphones are picking this up. Go  
24 ahead.

25                BY MR. ZAUNER:

1 Q Was there anybody else present on this trip besides  
2 you and Ms. Sorenson?

3 A No.

4 Q Perhaps this would be a good place -- for the  
5 record, would you spell Ms. Sorenson's name?

6 MR. SCHATTENFIELD: L-I-N-D-A.

7 WITNESS: S-O-R-E-N-S-O-N.

8 BY MR. ZAUNER:

9 Q What was the purpose of your trip to California with  
10 Ms. Sorenson?

11 A To purchase Christmas presents at -- I forget the  
12 terminology they use here -- a warehouse direct shopping  
13 center located in Palm Springs and San Fernando Valley. This  
14 would be individual companies selling at 50 to 70 percent off  
15 direct from their warehouse to retail.

16 Q Did you, at one point on this trip, stop the van in  
17 front of a residence and ask Ms. Sorenson to hide in the back  
18 of the van?

19 A Well, in part. I did stop the van. She was already  
20 sleeping in the back under a sleeping bag and I told her to  
21 stay there and I would be back.

22 Q Did you ask her to hide?

23 A I told her to stay there and stay in the back -- in  
24 the van in the back and remain there under the sleeping bag.

25 Q After you told her to do this, did you remove the

1 door panel of the van?

2 A I removed a small panel located by the handle where  
3 I had kept my stash of marijuana.

4 JUDGE SIPPEL: How much is in a stash?

5 WITNESS: Well, in this case, it was a jar -- a  
6 couple of jars that were to cover my use and her use for  
7 approximately five or six days.

8 BY MR. ZAUNER:

9 Q Did you then take any of that marijuana and sell it?

10 A No. I used it.

11 Q Isn't it a fact that the purpose of having Linda  
12 Sorenson hide was that she would not see you sell the  
13 marijuana you had secreted in the panel of the car -- or the  
14 van?

15 A No, no. The purpose of having her remain under the  
16 sleeping bag is so that the people that own the home would not  
17 see her and that she would not see them because I wanted to be  
18 discretionary in the -- because it was no secret that I was  
19 going in there to get high and I was going in there to visit  
20 with these people. So I didn't want them to see her in case  
21 they came out to say good-bye, which they did do, and I didn't  
22 want her to see where I was going for their own security. So  
23 I told her to stay in the van, stay underneath the sleeping  
24 bag, which she did, and I think she testified to that.

25 Q Why were you worried about her security?



1           A     Well, her security as far as -- well, I take that  
2 back. I mean, the security of the people and then her not  
3 knowing who these people are.

4           Q     Why were you worried about their security?

5           A     Well, it's obvious I didn't trust her to a full  
6 degree and it sure did prove out to be that way, didn't it?

7           Q     What was it that you didn't --

8                 JUDGE SIPPEL: Just answer his questions, Mr.  
9 Richards.

10                WITNESS: That's what I mean. I didn't trust her  
11 judgement in -- I didn't want to --

12                BY MR. ZAUNER:

13           Q     What was it you were afraid she might do?

14           A     She may come back at some future time to try to  
15 bribe these people, she may tell somebody else that these  
16 people here are known users, and direct somebody else that  
17 could turn around to rob them or to bribe them.

18           Q     Did you ever tell anyone that you could receive  
19 \$4,000 a pound for marijuana in California?

20           A     No.

21           Q     Did you ever sell marijuana in California?

22           A     No.

23           Q     Isn't it a fact that in the last few years on the  
24 ranch, that you sold virtually no fruit or vegetables that had  
25 been grown on the ranch?

1           A     In what period of time are you speaking of?

2           Q     Let's say 1989 to 1991, during the period when Linda  
3 Sorenson lived on the ranch on and off.

4           A     Well, in 1988, the U.S. Department of Agriculture,  
5 at my request, determined that the 6,000 trees purchased from  
6 C & O Nursery had phythorpus cactorum which is a disease that  
7 eats the trunk of the tree away and kills the tree and if it  
8 doesn't kill the tree, if the tree survives, it seriously  
9 ruins the production of the tree. This was determined in  
10 actually July of '88 and then extensive tests were done to see  
11 to what degree it affected the total orchard and a lawsuit was  
12 established and a case -- they paid me 60-some thousand  
13 dollars as a settlement for just that very thing.

14          Q     Then the answer to my question is that I am correct  
15 that in the last couple of years, there was essentially no  
16 fruit or vegetables growing on the ranch that were sold.

17          A     No. I'm saying the volume had decreased immensely  
18 from '89 and '90 relating only to the trees. My other crops  
19 as carrots, garlic -- carrots being my main crop, garlic being  
20 a secondary crop, winter squash, summer squash being a  
21 seasonal crop were in tact, in addition to another farm that I  
22 owned that I leased 40 acres that I farmed carrots on and  
23 garlic, also.

24          Q     Isn't it a fact that you never sold any of the  
25 garlic crop?

1           A     The only year that I never sold any garlic was in  
2 the first year that we planted. Garlic being an expensive  
3 crop, we grew the first year, saved the total crop, replanted  
4 it the second year to get into the 5,000 pound or better range  
5 per year. Garlic is grown by the process of the same clove  
6 that you have. You break up the clove to the little pieces  
7 that it comes in and then you plant those individually. So  
8 the first year, we started off with about 400 pounds purchased  
9 for about a thousand dollars in value. Then the following  
10 year, we had 2,000 pounds to plant to get a 5,000 or close to  
11 saleable product.

12           Q     Were you aware that after your arrest, Linda  
13 Sorenson was interviewed by a man by the name of Daniel Bloss?

14           A     Yes.

15           Q     Could you identify Daniel Bloss for us?

16           A     Daniel Bloss is a private investigator from Nogales,  
17 Arizona, I believe, employed by Joseph P. DiRoberto, an  
18 attorney that I had retained.

19           Q     Do you know who arranged for her to be interviewed?

20           A     Joseph P. DiRoberto.

21           Q     Did you ask Sorenson to give the interview?

22           A     I believe so.

23           Q     At this time, had you and Ms. Sorenson reconciled?

24           This comes --

25           A     Yes.

1 Q Just for the record, this comes at a point of time  
2 after your arrest on July 25th and the charge of domestic  
3 violence.

4 A Correct.

5 Q And your testimony is that you had reconciled  
6 subsequent to that charge?

7 A Yes.

8 Q Were you present at the interview that Daniel Bloss  
9 did of Ms. Sorenson?

10 A Present while he was interviewing her?

11 Q Yeah.

12 A No.

13 Q Do you know whether the interview was recorded?

14 A I assume it was.

15 Q Did you discuss with Sorenson the fact that she was  
16 going to be interviewed by Bloss?

17 A What do you mean?

18 Q Did you speak to her before --

19 A Do you mean as to the time and the date?

20 Q Before she was interviewed, did you discuss with  
21 Linda Sorenson the fact that she was going to be interviewed  
22 by Mr. Bloss?

23 MR. McCARTIN: Excuse me, Your Honor. I'd like to  
24 object at this point if I could.

25 JUDGE SIPPEL: Let's hear the objection.

1                   MR. McCARTIN: The objection is I believe I know  
2 where Mr. Zauner's going with this line of questioning and  
3 before he gets into it substantively, I'd like to interpose my  
4 objection which is the same objection I raised with respect to  
5 the indictment.

6                   I believe that Mr. Zauner now intends to cross  
7 examine Mr. Richards with respect to witness tampering  
8 allegations that were raised in Counts Two through Five of the  
9 indictment and for the same reasons that I objected to the  
10 admission of the indictment, I object to the inquiry that Mr.  
11 Zauner now intends to embark upon.

12                  I think if he does get into this, you know, not only  
13 will this proceeding turn into what Mr. Zauner himself feared  
14 when he objected in the beginning to some of Mr. Richards'  
15 direct testimony and examination of Count One and the facts  
16 underlying it, but it will turn into an examination of Counts  
17 Two, Three, Four, and Five under the indictment which are mere  
18 charges which were dismissed and which are not the proper  
19 subject of Mr. Zauner's cross examination of Mr. Richards.

20                  JUDGE SIPPEL: Mr. Zauner?

21                  MR. ZAUNER: Your Honor, Richard Richards has placed  
22 his character into evidence. Mr. Richards is claiming that he  
23 is now reformed, that although he was convicted of possession  
24 with intent to distribute marijuana, that there are certain  
25 mitigatory things that have to be considered in evaluating

1 that charge in light of his ownership of a television station.

2 In this instance, what I'm doing is probing Mr.  
3 Richards' character by showing incidents of wrong-doing on his  
4 part. I think once they have placed his character into  
5 evidence in a proceeding like this, that I have a right to  
6 show instances of wrong-doing upon -- on Mr. Richards' part.

7 JUDGE SIPPEL: Well, you're talking about -- does  
8 this line of questioning relate to what was -- what transpired  
9 at or about the time of this arrest in '91?

10 MR. ZAUNER: Yes. Immediately following, within a  
11 few months following the arrest in 1991.

12 JUDGE SIPPEL: And it related to the same event. I  
13 mean, the same -- not the same event, but the same -- it arose  
14 out of the --

15 MR. ZAUNER: This arose out of the same event, the  
16 allegations that Mr. Richards was growing marijuana with the  
17 intent to distribute it.

18 JUDGE SIPPEL: Well, we know that he did some bad  
19 things then and we know that he got convicted for one of the  
20 bad things that he did. But what relevance does this have?  
21 And I mean, all it's going to do is perhaps make the criminal  
22 activity at that time appear -- appear to be worse than a one-  
23 count -- than a one-count conviction.

24 MR. ZAUNER: Yes, Your Honor.

25 JUDGE SIPPEL: But that's got -- well, it raises two

1 problems. First of all, the concern -- this was to what Mr.  
2 McCartin has indicated and it raises an issue that is going to  
3 need litigation. I mean, they would be entitled to offer more  
4 evidence on that point. But more importantly -- well, I  
5 shouldn't say more importantly. Equally important. Is what  
6 we're trying to do is take a look at what he did from the time  
7 that he got his conviction up until the present in terms of  
8 his conduct including how he -- not the programming of the  
9 station, but whether he operated the station without running  
10 afoul of the FCC regulations and whether or not he's got a  
11 reputation for good character in the community.

12 MR. ZAUNER: Well, Your Honor, I think if he did the  
13 things that he's been accused of doing, this certainly would  
14 affect his reputation for -- in the community. If, in fact,  
15 he did seek to influence a witness in the case against him  
16 improperly, that would certainly bear on his character. I  
17 think it would be certainly something the Commission would  
18 want to know about in determining whether or not Mr. Richards  
19 is suited and fit to be a licensee.

20 JUDGE SIPPEL: Well, the Commission doesn't want to  
21 litigate that. The Commission has not set an issue in this  
22 case to determine whether or not he had made a false statement  
23 or a false representation or lied under oath in another  
24 proceeding which, you know -- I mean, I've seen issues like  
25 that get set. They haven't done that. He simply said --

1 MR. ZAUNER: But once --

2 JUDGE SIPPEL: Wait a minute now. The hearing  
3 designation order simply says he was convicted of a crime and  
4 therefore, he should not be renewed or he should show cause  
5 and effect as to why his license should be renewed and in the  
6 context of doing that, he's entitled to show mitigation,  
7 extenuation, and rehabilitation.

8 MR. ZAUNER: Your Honor, I would call your attention  
9 to the Rules of Evidence, Rule 405, reputation or opinion  
10 which says that, "In all cases in which evidence of character  
11 or a trait of character of a person is admissible, proof may  
12 be made of testimony as to reputation or by testimony in the  
13 form of an opinion. On cross examination, inquiry is  
14 allowable into relevant, specific instances of conduct," and  
15 that's what I'm dealing with, specific instances of conduct.

16 JUDGE SIPPEL: Let me hear from Mr. McCartin on  
17 that.

18 MR. McCARTIN: Your Honor, let me first say that the  
19 evidence that we're offering in mitigation is evidence of Mr.  
20 Richards' character now, 1993, this hearing today. This  
21 evidence is not evidence of Mr. Richards' character in 1989 or  
22 whatever year this was, '91, when this took place. That's --  
23 it's remote in time and I think the discretion -- you have to  
24 balance the value of that testimony, even if technically  
25 admissible, with the waste of time of this Court and money,



1 | you should be exercised to reject it, even assuming it would  
2 | be admissable.

3 |           But the bottom line here, I think, is that this  
4 | charge, no matter how much Mr. Zauner inquires into it, will  
5 | not be resolved. There is no conviction. We will not convict  
6 | Mr. Richards of this here today. We will, however, have a  
7 | much more burdened record that can be nothing but inconclusive  
8 | and I think it's within your prerogative to reject this  
9 | attempt as a waste of time, as a fruitless diversion, and as I  
10 | reemphasize, that as you pointed out yourself, that it's his  
11 | character today that we are concerned with, not his character  
12 | two years ago or three years ago or ten years ago.

13 |           JUDGE SIPPEL: Well, as I say, obviously his  
14 | character back at the time of the conviction is not -- is  
15 | nothing to write home about. I mean, you get a conviction.  
16 | That's kind of -- you know, it's like -- and you want to just  
17 | add -- you want to add to that by bringing up a factual  
18 | situation over and above the conviction.

19 |           MR. ZAUNER: Right.

20 |           JUDGE SIPPEL: Factual situation as to which  
21 | obviously there was a Grand Jury that had reason to believe  
22 | that things had happened. But the point is, is that the facts  
23 | -- the facts are still contested and it's a question of how  
24 | far do you -- I mean, how far do we go with this? I haven't  
25 | let the indictment in for the reasons that I stated.